

6-186AC69
Date JUL 14 1976
Fee \$ 60-
ICC Washington, D. C.

ROPES & GRAY
225 FRANKLIN STREET
BOSTON 02110

AREA CODE 617 423-6100

July 12, 1976

Interstate Commerce Commission
Washington, D. C. 20423

RECORDATION NO. 8394 A, B, C + D
Filed & Recorded

Attention: Mrs. Mildred Lee

JUL 14 1976 -3 25 PM

Re: Pickens Railroad Company

INTERSTATE COMMERCE COMMISSION

Dear Mrs. Lee:

As you requested in our telephone conversation today,
I enclose a check in payment of filing fees relating to
documents numbered 8394, 8394a, 8394b, 8394c and 8394d.
Your cooperation in this matter is greatly appreciated.

Very truly yours,

William F. McCarthy
William F. McCarthy

WFM:sf
Enclosure

INTERSTATE
COMMERCE COMMISSION
RECEIVED

CA JUL 14 1976

ADMINISTRATIVE SERVICES
MAIL UNIT

RECORDATION NO. 8394-C Filed & Recorded

JUL 1 1976 9 40 AM

INTERSTATE COMMERCE COMMISSION

GENERAL DISCOUNT CORPORATION

COMMERCIAL FINANCE

RECORDATION NO. 8394 Filed & Recorded

JUL 1 1976 9 40 AM

INTERSTATE COMMERCE COMMISSION

JUL 1 1976 9 40 AM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 8394-A Filed & Recorded

JUL 1 1976 9 40 AM

RECORDATION NO. 8394-A Filed & Recorded

INTERSTATE COMMERCE COMMISSION

JUL 1 1976 9 40 AM

INTERSTATE COMMERCE COMMISSION

June 29, 1976

RECORDATION NO. 8394-B Filed & Recorded

JUL 1 1976 9 40 AM

INTERSTATE COMMERCE COMMISSION

Secretary
Interstate Commerce Commission
Washington, D. C. 20423

Fee \$ 50

Re: Pickens Railroad Company

CC Washington, D. C

Dear Sir:

1. Pursuant to Title 49, Code of Federal Regulations, Part 1116, General Discount Corporation encloses for filing the original and two certified copies of the following documents:

- (a) Agreement dated June 30, 1976 between Pickens Railroad Company ("Pickens"), National Railway Utilization Corporation ("NRUC"), Metal Fabricators, Inc. ("MFI") and General Discount Corporation ("GDC");
- (b) ^{Assignment} Agreement dated as of June 30, 1976 between North Carolina National Bank ("NCNB") and GDC under which NCNB assigned to GDC its rights as Vendor under a certain Conditional Sale Agreement between MFI, NRUC and Pickens dated as of December 1, 1974 (the "Conditional Sale Agreement");
- (c) Amendment Agreement dated as of June 30, 1976 between Pickens and GDC as Vendor under the Conditional Sale Agreement amending certain provisions of that Conditional Sale Agreement;
- (d) Guaranty dated as of June 30, 1976 by which NRUC guarantees all obligations of Pickens to GDC; and

Counterpart
Michael J. Conrad

June 29, 1976

- (e) Termination of Security Interest by First Security State Bank relating to Security Agreement between Pickens and said Bank as Trustee for Itel Leasing International, Inc. dated March 15, 1975. §394-D

2. Information concerning these transactions required to be included in this letter of transmittal pursuant to 49 C.F.R. Section 1116.4 is as follows:

(a) Names and Addresses of Parties to the Transaction described in 1(a) above:

- (1) Conditional Vendee: Pickens Railroad Company
402 Cedar Rock Street
Pickens, South Carolina 29671
- (2) Prospective Conditional Vendor: General Discount Corporation
100 State Street
Boston, Mass. 02109
- (3) Builder/Guarantor: National Railway Utilization Corporation
P. O. Box 1946
Greenville, South Carolina 29602
- (4) Conditional Vendor/Guarantor: Metal Fabricators, Inc.
P. O. Box 1946
Greenville, South Carolina 29602

(b) Names and Addresses of Parties to the Transaction described in 1(b) above:

- (1) Assignor: North Carolina National Bank
One NCNB Plaza
Charlotte, North Carolina
- (2) Assignee: General Discount Corporation
100 State Street
Boston, Mass. 02109

(c) Names and Addresses of Parties to the Transaction described in 1(c) above:

June 29, 1976

(1) Conditional
Vendee: Pickens Railroad Company
402 Cedar Rock Street
P. O. Box 216
Pickens, South Carolina 29671

(2) Conditional
Vendor: General Discount Cor-
poration
100 State Street
Boston, Mass. 02109

(d) Names and Addresses of Parties to the
Transactions described in 1(d) above:

(1) Guarantor: National Railway Utiliza-
tion Corporation
P. O. Box 1946
Greenville, South Carolina 29602

(2) Obligee: General Discount Cor-
poration
100 State Street
Boston, Mass. 02109

(e) Names and Addresses of Parties to the
Transaction described in 1(e) above:

(1) Secured Party: First Security State Bank
as Trustee for Itel
Leasing International, Inc.
P. O. Box 1289
Salt Lake City, Utah 84110

(2) Debtor: Pickens Railroad Company
402 Cedar Rock Street
P. O. Box 216
Pickens, South Carolina 29671

(f) General Description of the Equipment
Covered by the Agreements described in
1(a) through 1(e) above:-

The equipment is seventy-two (72) seventy-
ton railroad freight cars bearing (i) the
consecutive serial numbers 55128 through
55199, inclusive, as designated by Pickens
Railroad Company, and (ii) the marking
"General Discount Corporation, Conditional
Vendor.";

Secretary -- 4

June 29, 1976

(g) The following prior recordings are related to the documents described in 1. above and enclosed:

- (1) Conditional Sale Agreement, Recordation No. 7737 at 10:15 a.m. on December 10, 1974;
- (2) Agreement and Assignment between MFI and NCNB, Recordation No. 7737-A at 10:15 a.m. on December 10, 1974; and
- (3) Security Agreement between Pickens and First Security State Bank as Trustee for IteI Leasing International, Inc., Recordation No. 7945-B at 3:25 p.m. on June 5, 1975.

3. The original of each of the documents enclosed should be returned to:

William F. McCarthy
Ropes & Gray
225 Franklin Street
Boston, Mass. 02110

Having knowledge of the matters set forth herein,



Lawrence R. Seder
President
General Discount Corporation

GUARANTY

RECORDATION NO. 8394-^c Filed & Recorded
JUL 1 1976 9 40 AM
~~INTERSTATE COMMERCE COMMISSION~~

General Discount Corporation
100 State Street
Boston, Massachusetts 02109

Re: Agreements between General Discount
Corporation ("GDC") and Pickens
Railroad Company ("Pickens")
dated as of June 30, 1976

Dear Sirs:

National Railway Utilization Corporation ("NRUC"), a corporation duly organized and existing under the laws of South Carolina, hereby requests that General Discount Corporation ("GDC"), a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts,

(i) acquire from North Carolina National Bank (the "Bank") all its rights under a certain Agreement and Assignment dated as of December 1, 1974, between the Bank and Metal Fabricators, Inc. ("MFI") under which MFI transferred to the Bank all its rights under a certain Conditional Sale Agreement between MFI, NRUC and Pickens Railroad Company ("Pickens") dated as of December 1, 1974 covering seventy-two (72) seventy-ton box cars numbered 55128 through 55199 inclusive (the "Equipment") and

(ii) enter into a certain Revolving Credit Agreement with Pickens under which GDC will agree to advance on a revolving credit basis up to \$320,000 secured by a security interest on the Equipment subject only to its security interest therein as Vendor under the Conditional Sale Agreement.

To induce GDC to do so, and in consideration thereof and of the benefits which will, directly and indirectly, accrue to NRUC by reason of such acquisition by GDC of the Equipment and the advance to Pickens under the Revolving Credit Agreement, NRUC hereby agrees with GDC as follows:

1. NRUC hereby directly and unconditionally guarantees to GDC the prompt and punctual payment of all obligations, indebtednesses and liabilities of Pickens to GDC, direct or indirect, secured or unsecured, absolute or contingent, due or to become due and of every other kind whatever and however created, including, without limitation, the full and prompt and faithful performance, payment and discharge of all of Pickens' obligations to GDC under the Conditional Sale Agreement, as now or hereafter amended, and the Revolving Credit Agreement as from time to time amended, including, without limitation, all payments of principal and/or interest, fees, assessments or other payments, reimbursements, indemnifications, damages, delinquency fees or any other liabilities, irrespective of any invalidity therein or the unenforceability thereof (each and all such obligations, indebtednesses and liabilities hereinafter called "Obligations"), now existing, or as may hereafter arise or be incurred at any time. This guaranty is a guaranty of payment and not of collectibility. The obligations of NRUC hereunder shall be unconditional irrespective of the genuineness, regularity or enforceability of the Conditional Sale Agreement as now in effect or hereafter amended, the Revolving Credit Agreement and/or any other agreement or any other circumstance which might otherwise constitute a legal or equitable discharge of a surety or guarantor.

2. This Guaranty shall remain in full force and effect so long as Pickens has any remaining Obligation to GDC under the Conditional Sale Agreement or the Revolving Credit Agreement and thereafter for any period prior to actual receipt by GDC, by registered or certified mail, of written notice of the revocation of this Guaranty, which notice shall not affect or diminish NRUC's liability, fixed or contingent, existing, or rights acquired by GDC, prior to such receipt. If GDC engages in any transactions with Pickens or takes any other action after such revocation but prior to receipt by GDC of said written notice thereof, GDC's rights shall be the same as they would have been if such revocation had not occurred.

3. NRUC's liability hereunder is and shall be unlimited, absolute, and continuing, and may be enforced directly as though the Obligations of Pickens were NRUC's primary obligations and without requiring GDC first to resort to or exhaust any other rights or remedies or any security whatsoever. The obligations of NRUC hereunder shall not be affected by any action taken under the Conditional Sale Agreement and/or the Revolving Credit Agreement as from time to time amended, in the exercise of any right or power therein conferred, or by any failure or omission to enforce any right conferred, or by any failure or omission to enforce any right conferred thereby, or by any waiver of any covenant or condition therein provided, or by an acceleration of the payment of principal, interest or other Obligations under the Conditional Sale Agreement and/or the Revolving Credit Agreement, or by the merger or consolidation of Pickens into or with any corporation or any sale or transfer by

Pickens of all or any part of its property, or by any extension or renewal in whole or in part of Obligations under the Conditional Sale Agreement and/or the Revolving Credit Agreement, or by any modification, alteration, amendment or addition of or to the Conditional Sale Agreement and/or the Revolving Credit Agreement or by any other circumstance whatsoever (with or without notice to or knowledge of NRUC) which may or might in any manner or to any extent vary the risks of NRUC, or might otherwise constitute a legal or equitable discharge of a surety or guarantor; it being the purpose and intent that the Guaranty and NRUC's obligations hereunder not be discharged except by payment as herein provided.

4. NRUC hereby assents to all the terms of the Conditional Sale Agreement, as amended by agreement of MFI, NRUC, Pickens and GDC of even date herewith and the Revolving Credit Agreement and further hereby assents and agrees to all renewals, extensions or postponements of the time of payment or performance and to all compromises, adjustments, settlements and indulgences by GDC to or with Pickens or others; to all changes, additions, reductions, substitutions, exchanges, releases or alterations in, to and of any Obligations of Pickens or of any other obligors, guarantors or sureties, primarily, secondarily or otherwise liable, by operation of law or otherwise, or in, to and of any security for said Obligations; to all provisions of all existing and future instruments, documents and papers as may evidence, create, contain, give rise or otherwise relate to any Obligations of Pickens to GDC, or any security therefor and to all things as may be done pursuant thereto; that the prior

or hereafter existence, occurrence or doing by GDC at any time and from time to time of any or all of the foregoing shall in no way terminate, impair or diminish NRUC's said liability and NRUC shall not have any rights or recourse against GDC by reason of any of its acts or omissions pursuant to the foregoing.

5. NRUC waives notice of acceptance of this Guaranty, presentment, demand, protest and all notices thereof; all notices of any breaches, defaults, acts or omissions by Pickens or others under the Conditional Sale Agreement, the Revolving Credit Agreement or any other agreement; all notices of every kind in connection with this Guaranty or the Obligations guaranteed or their satisfaction or creation or any security and of any action taken in reliance hereon; all other notices and demands of every kind to which NRUC might otherwise be or become entitled.

6. The rights of GDC hereunder may be waived or varied only by an instrument in writing signed by GDC and no course of dealing between GDC and any guarantors, Pickens or others or by GDC with respect to any security, nor any delay in exercising (or any omission to exercise) any rights or remedies shall operate as a waiver of any such rights or remedies or of any other of GDC's rights or remedies; nothing shall satisfy, discharge or preclude the enforcement of NRUC's liability hereunder except absolute and irrevocable payment and fulfillment of all Obligations of Pickens to GDC. With respect to any liability hereunder no payment or satisfaction received or credited in whole or

in part by GDC to the Obligations, from whatever source received shall effectively constitute payment or satisfaction unless and until such payment is free of all lawful claims of all other creditors of Pickens, existing or potential, and of all such creditors of any payor from whom or from whose property the payment was made or derived and of anyone claiming rights of any such creditors, or of Pickens, or of such payor, through their acts or by operation of laws. NRUC further agrees to hold GDC harmless and indemnified from and against all claims, demands and actions by whomsoever and against all loss, damage, liability, costs, expenses and reasonable attorneys' fees which are suffered, paid or incurred by GDC in respect thereof and which arise out of or follow or are consequential or related to any Obligations of Pickens to GDC or any security therefor or any dealings or transactions between Pickens and GDC; to pay to GDC all costs, expenses and reasonable attorneys' fees paid or incurred by GDC in enforcing this Guaranty.

7. All GDC's rights and remedies against Pickens and NRUC and any security shall be cumulative and may be exercised successively or concurrently. Upon NRUC's execution of this Guaranty, as Guarantor, it shall become forthwith absolutely bound.

8. This Guaranty shall be governed by and construed according to the laws of the Commonwealth of Massachusetts, and shall inure to the benefit of GDC, its successors and assigns, and shall bind NRUC, its successors and assigns.

9. NRUC hereby grants GDC full power in its uncontrolled discretion and without notice to NRUC and without in anyway affecting liability of NRUC under this Guaranty: (a) to waive compliance with, add to, modify or otherwise change any terms of the Conditional Sale Agreement, the Revolving Credit Agreement or any other present or future agreement relating directly or indirectly to any of the Obligations, (b) to grant any extensions or renewals of the Obligations and any other indulgence with respect thereto and to effect any release, compromise or settlement with respect thereto, (c) consent to the addition to, substitution, exchange or release or other disposition of, the present or future collateral for, or and direct or indirect guaranty of, the Obligations, whether or not the collateral, if any, received by GDC upon the exercise of such power shall be of the same or of a different character or value than the collateral released.

10. NRUC shall not enforce or otherwise exercise any claim or assert any rights of reimbursement, subrogation, contribution or otherwise whatsoever against Pickens or any other person with respect to the Obligations or the security therefor unless and until the Obligations shall have been paid and discharged in full.

11. NRUC hereby represents and warrants as follows:

(a) NRUC is a corporation duly organized, validly existing and in good standing under the laws of the State of

South Carolina, has the power and authority to own its properties and to carry on its business, and has the power, authority and legal right to execute and deliver this Guaranty and to perform and observe the terms and provisions hereof;

(b) The execution, delivery and performance by NRUC of this Guaranty have been duly authorized by all necessary corporate action, do not require the consent of any other party, and do not violate or contravene any law or any order of any court or governmental agency or any provision of its certificate of incorporation or bylaws or of any indenture, agreement or other instrument to which NRUC is a party or by which it or any of its properties may be bound;

(c) This Guaranty is a legal, valid and binding obligation of NRUC, enforceable against NRUC in accordance with its terms;

(d) The Balance Sheet of NRUC and its subsidiary Pickens as of May 31, 1975 and the related statement of earnings and deficit and of changes in financial position for the fiscal year ended such date (copies of which have been furnished to GDC) have been prepared in accordance with generally accepted accounting principles and fairly present the financial condition of NRUC as of such date and the results of its operations

for the year then ended, and since May 31, 1975 there has been no material adverse change in such condition or operations.

IN WITNESS WHEREOF NRUC has hereunto set its hand and seal at Boston in the Commonwealth of Massachusetts as of the day and year first stated above.

NATIONAL RAILWAY UTILIZATION CORPORATION

By

John G. McSwirth
Vice President

ATTEST:

Frank P. Tumbarello
Asst. Sec.

ACKNOWLEDGMENTS

Suffolk, ss.

On this 30th day of *June*, 1976, before me appeared Lawrence R. Seder, to me personally known, who, being by me duly sworn, did say that he is president of General Discount Corporation and the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said Lawrence R. Seder acknowledged said instrument to be the free act and deed of said corporation.

Elisa M. Lopez

Notary Public

On this 30th day of *June*, 1976, before me appeared John A. Mariscotti, to me personally known, who, being by me duly sworn, did say that he is Executive Vice President of National Railway Utilization Corporation, a South Carolina corporation, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said John A. Mariscotti acknowledged said instrument to be the free act and deed of said corporation.

Elisa M. Lopez

Notary Public
ELISA M. LOPEZ, Notary Public
My Commission expires Nov. 22, 1979